

# Between fiction and reality: rights of nature in German television and before the ICJ

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Last week, the German public free-TV channel ARD broadcast the film “Ökozid” (“ecocide”), commissioned by ARD and produced by the independent production company zero one film, set in 2034, in which 31 states of the Global South suffering from the consequences of climate change sue the Federal Republic of Germany for damages before the International Court of Justice (ICJ). The 31 states, among them Mozambique, Haiti and Bangladesh, which serves as a case study for the adverse impacts of climate change, base their claim on Germany’s violation of Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) by failing to address climate change adequately since the end of the 1990s. The claimants argue that the right to life set out in Article 6(1) ICCPR guaranteed a “right of nature to integrity”.

Unfortunately, the film itself does not provide a legally instructive answer to the controversial question on whether nature can and should be recognized as a right-holder. While the plot focusses on whether human rights in general constitute state obligations with regard to dealing with climate change, it does not further discuss the content of Article 6(1) ICCPR. In fact, in view of the large number of human fatalities in the 31 states caused by climate change, it would have been sufficient to refer to a human right to a healthy environment derived from Article 6(1) ICCPR instead of taking the even more controversial detour via the concept of rights of nature, and it remains unclear which legal path the film actually wants to take. However, taken the film’s plot as it is, the legal question it raises is thus whether rights of nature are a mere legal fiction or whether current rights catalogues can indeed be interpreted as providing not only human rights, but also rights of nature.

## Rights of nature in national legal systems

Legislatures and courts have recognized rights of nature within the past 12 years in a number of states, among them [Ecuador](#), [Bolivia](#), [New Zealand](#), [Colombia](#), [Argentina](#), [India](#), [Uganda](#) and [Pakistan](#) (for a comprehensive overview see [here](#), [here](#) and in a blog post [here](#)). In Germany, a [constitutional complaint](#) submitted by the German Branch of the animal rights organization PETA is currently pending before the Federal Constitutional Court, alleging, inter alia, the violation of the right to life and physical integrity of piglets being castrated without the application of anesthesia under Article 2(2)(1) of the German Constitution (*Grundgesetz*). What can be observed in many states around the globe is thus a shift from legal anthropocentrism, i.e. humankind’s self-conception of being the center of legal considerations, towards legal systems that also integrate non-human beings into the group of the legally relevant.

## **Rights of nature in International Law**

Contrary to what the film suggests, rights of nature are not as such part of an international legal instrument. However, rights of nature have emerged also in international law. The concept of rights of nature has already attracted attention at the international level since the establishment of a [UN platform](#) on the initiative of Bolivia in 2009.

In 2017, the Inter-American Court of Human Rights (IACtHR) in an [advisory opinion](#) indicated an openness to recognizing rights of nature, independent of human interests, under the right to a healthy environment entrenched in Article 26 American Convention on Human Rights in conjunction with Article 11 of the Protocol of San Salvador. In para. 62, the Court stresses

“that, as an autonomous right, the right to a healthy environment (...) protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.”

In a recent [judgment](#) of February 2020 (discussed [here](#)), the Court confirmed its recognition of independent rights of nature (para. 203). Apart from that, also more recent international treaties turn away from an anthropocentric approach, indicating an openness to the concept of rights of nature. The 1992 Biodiversity Convention, for example, speaks in its preamble of the “intrinsic value of biological diversity”. The preamble of the Paris Agreement of 2015 stresses the “importance of ensuring the integrity of all ecosystems (...) recognized by some cultures as ‘Mother Earth’”.

## **Rights of nature under the ICCPR**

Whether Article 6(1) ICCPR constitutes a right of nature to integrity, as alleged by the claimants in the ARD film, is arguable. The wording of Article 6(1) ICCPR (“Every human being has the inherent right to life.”) weighs heavily against the view that it contains a right of nature, because it refers to human beings only. However, this is less clear regarding the rest of the ICCPR provisions. Article 2(1) ICCPR stipulates that “Each State Party (...) undertakes to respect and to ensure to all individuals (...) the rights recognized in the (...) Covenant”. As Andreas Fischer-Lescano has already [suggested](#) (pp. 15 f.), the term “individual” could be interpreted in the way that not only human, but also non-human individuals fall under the rights set out by the ICCPR. Unlike Art. 6(1) ICCPR, most of those rights start with the terms “No one”, “Everyone”, “Anyone”, or “All persons”, indicating an openness towards the recognition of non-human right-holders. This is all the more true in light of the dynamic interpretation of international treaties (cf. Article 31(3) lit. c) Vienna Convention on the Law of Treaties). Since the end of the 20<sup>th</sup> century, environmental protection has become an ever more pressing issue in the international community,

including the member states of the ICCPR, which is reflected in a large and growing number of international treaties in that area.

### **Rights of nature today and in the future**

This post has aimed to demonstrate that the concept of rights of nature is not merely an idea for decorating the content of science-fiction films. In recent years, rights of nature have become a legal reality and they are being discussed in a growing number of states as well as at the international level. Most of all, they are necessary to address escalating environmental problems such as climate change and a massive loss of biodiversity more effectively, especially where violations of human rights are not obvious or remain unclaimed. It should therefore be welcomed that the concept gains in importance and visibility also in the media. Still, after emerging in a number of national legal systems and before the IACtHR, it remains to be seen whether rights of nature may in the near future even be discussed before the ICJ.

The film “Ökozid” is available free of charge in the [ARD media library](#).

